

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
" B " BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.103/AHD/2022

निर्धारण वर्ष/Asstt. Year: 2014-2015

M/s. Harsiddh Quarry Works, At Alva (Vatrak), Taluka Bayad, District Aravalli, Alva(Vaarak)-383325. PAN: AAIFH0303H	Vs.	Principal Commissioner of Income Tax, Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Shri Deepak Shah, A.R
Revenue by :	Shri Sudhendu Das, CIT.D.R

सुनवाई की तारीख/**Date of Hearing** : **09/01/2024**

घोषणा की तारीख /**Date of Pronouncement**: **12/01/2024**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned P.C.I.T.-1, Ahmedabad, arising in the matter of revision order passed under s. 263 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2014-2015.

2. The only grievance of the assessee is that the Ld. P.C.I.T erred in holding the Assessment Order framed u/s 143(3) r.w.s. 147 of the Act, as erroneous in so far prejudicial to the interest of revenue.

3. The facts in brief are that the assessee in the present case is an individual and filed his return of income declaring an income of Rs. 63,980.00 under the head "Business Income". The assessee in the year under consideration has purchased the property worth of Rs. 59,70,000/- as per registered purchase deed. However, the Ld. P.C.I.T, on examination of the case records found that the assessee has not substantiated the payment made to vendor amounting to Rs. 20,01,000/- out of the total consideration at Rs. 59,70,000/- only. Accordingly, the Ld. P.C.I.T treated impugned payment of Rs. 20,01,000.00 as unexplained investment u/s 69 of the Act. The Ld. P.C.I.T. finally directed the AO to make the addition of Rs. 20,01,000/- to the total income of the assessee by observing as under:

10. As discussed in para-8, it is clear that the assessee firm has made investment of Rs. 59,70,000/- in the purchase of land at block/ survey No.100, khata No.169, Moje-Alva, (Vatrak), taluka Bayad, district Arvalli, Gujarat during the year under consideration out of which amount of Rs.20,01,000/- was invested through unexplained source of income as the assessee has failed to respond in this regard despite two specific opportunities. Further, the assessee firm also did not offer any explanation about the nature of the source of investment amounting to Rs. 20,01,000/-. Therefore, the said amount is required to be added in the total income of the firm for the year under consideration u/s 69 of the Act being unexplained investment. Accordingly, the AO is directed to add the said amount to the income assessed vide order u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 passed on 21/12/2019.

4. Being aggrieved by the order of the Ld. P.C.I.T., the assessee is in appeal before us.

5. The Ld. AR, before us filed a paper book running from pages 1 to 12 and submitted that the re-opening u/s 147 of the Act, was initiated by the AO on account of difference between purchase consideration shown by the assessee vis-a-vis Jantri value of the property under the stamp valuation. As such, there was no issue about the source of investment in the impugned property before the AO in the proceedings u/s 147 of the Act, therefore the Ld. PCIT cannot extend the

scope of assessment u/s 263 of the Act, by making the addition of those items which were not subject matter of re-assessment proceedings u/s 147 of the Act.

6. On the other hand, the Ld. DR vehemently supported the order of the authorities below.

7. We have heard the rival contentions and perused the materials available on record. The provision of section 147 of the Act provides, as applicable to the year under consideration, that the proceedings u/s 147 of the Act, can be initiated if the AO has reason to believe that any income chargeable to tax has escaped assessment and he may also take into consideration any other income chargeable to tax but escaped assessment during proceedings. This can be better understood through an example, assuming the AO has reason to believe that the assessee has claimed bogus purchases in the return of income, thus he can reopen the case limited to the extent of bogus purchase. However, if during the course of assessment proceedings, he comes to know about other expenses for example travelling expenses i.e. the assessee has claimed travelling expenses which were not for the purpose of the business, he (the AO) can also make the dis-allowance of travelling expenses as well. However, in a situation, where the AO does not make the addition of bogus purchase, then he could not make any other addition. This aspect has been settled by the series of judgments. The Hon'ble Bombay High Court in the case of CIT Vs. Jet Airways (I) Pvt. Ltd. reported in 331 ITR 296 has held as under:

The Shorter Oxford Dictionary defines the expression "also" to mean 'further, in addition, besides, too'. The word has been treated as being relative and conjunctive. Evidently, therefore, what Parliament intends by use of the words "and also" is that the Assessing Officer, upon the formation of a reason to believe under section 147 and the issuance of a notice under section 148(2) must assess or reassess: (i) 'such income'; and also (ii) any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section. The words 'such income' refer to the income chargeable to tax which has escaped assessment and in respect of which the Assessing Officer has formed a reason to believe that it has escaped assessment. Hence, the language which has been used by Parliament is indicative of the position that the assessment or reassessment must be in respect of the income in respect of which he has formed a reason to believe that it has escaped assessment and also in respect of any other income which comes to his notice subsequently during the course of

the proceedings as having escaped assessment. If the income, the escapement of which was the basis of the formation of the season to believe is not assessed or reassessed, it would not be open to the Assessing Officer to independently assess only that income which comes to his notice subsequently in the course of the proceedings under the section as having escaped assessment. If upon the issuance of a notice under section 148(2), the Assessing Officer accepts the objections of the assessee and does not assess or reassess the income which was the basis of the notice, it would not be open to him to assess income under some other issue independently. Parliament when it enacted the provisions of section 147 with effect from 1-4-1989 clearly stipulated that the Assessing Officer has to assess or reassess the income which he had reason to believe had escaped assessment and also any other income chargeable to tax which came to his notice during the proceedings. In the absence of the assessment or reassessment of the former, he cannot independently assess the latter.

7.1 At this juncture, we are inclined to refer the provision of section 147 of the Act, which reads as under:

147. *If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :*

7.2 An analysis of the above provision reveals that the AO certainly can touch other issues/income chargeable to tax which has escaped assessment other than those income/ issues based on which proceedings u/s 147 of the Act, were initiated. The controversy arises who will acquire the satisfaction as provided under the provision of 147 of the Act. To our understanding, it is the satisfaction of the AO who can touch the issues which came to his/her notice during the proceeding under section 147 of the Act but same was not subject matter of reopening of the assessment u/s 147 of the Act. In other words, the Ld. P.C.I.T cannot go to touch those issues with respect to which the AO was satisfied in the proceeding's u/s 147 of the Act, and therefore he chooses not to touch those other issues. In holding so we also draw support and guidance from the order of Coordinate bench of Mumbai Tribunal in case of Royal Western India Turf Club Vs. PCIT in ITA No. 640/MUM/2021 wherein the bench vide order dated 12-10-2021 held as under:

9. A reading of section 147 of the Act makes it clear that the assessing officer, in course of proceedings under the said provision can not only assess/reassess the escaped income based on which the assessment was reopened, but can also assess any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of proceedings under the aforesaid provision. Explanation 3 to section 147 of the Act further clarifies the substantive provision by saying that the assessing office, in course of proceedings under the said provision can not only assess/re-assess the escaped income based on which the assessment was reopened, but can also assess any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of proceedings under the aforesaid provision, notwithstanding that such issue does not form part of reasons recorded for reopening of assessment. Thus, on a holistic reading of section 147 of the Act it becomes very much clear that along with escaped income for which the assessment was reopened, the assessing officer can assess other escaped income which subsequently comes to his notice in course of re-assessment proceedings. In the facts of the present case, undisputedly, the issues raised by learned PCIT neither were the subject matter of reopening as per reasons recorded, nor did such matter come to the notice of the assessing officer in course of re-assessment proceedings.

10. The reopening of assessment as contemplated under section 147 of the Act is for the specific purpose of assessing the escaped income. Therefore, in a reassessment proceeding, the assessing officer can only assess that income which has escaped assessment. The income which is subject matter of assessment in the original assessment proceedings or which was in the domain of the assessing officer in course of original assessment proceedings certainly cannot be considered in the re-assessment proceedings. In our view, if at all, any order which can be considered to be erroneous and prejudicial to the interest of revenue for non consideration of the issues raised by learned PCIT, certainly, it has to be the original assessment order passed under section 143(3) of the Act and not the re-assessment order passed under section 143(3) r.w.s. 147 of the Act. Therefore, learned PCIT could have exercised her powers under section 263 of the Act only in respect of the original assessment order passed under section 143(3) of the Act. At this stage, we may refer to the following observations of the Hon'ble Supreme Court in case of CIT vs Alagendran Finance Ltd (supra):

12. The other decisions cited by learned counsel for the assessee also propound similar legal principle. Thus, in our view, the original assessment order having been passed on 06-02-2014, the impugned order passed under section 263 of the Act is barred by limitation in view of section 263(2) of the Act. At this stage, we consider it our duty to deal with the submissions of learned departmental representative that the assessee did not represent its case before learned PCIT and did not raise the issue of limitation. On perusal of records, it is seen that learned PCIT issued the show cause notice under section 263 of the Act on 08-03- 2021 and passed the impugned order on 19-03-2021 with undue haste. In fact, the assessee has raised specific grounds before us, being grounds 8 and 9, to the effect that neither hearing notice was issued to the assessee nor any opportunity of being heard was provided. Thus, we do not find merit in the submissions of learned departmental representative.

7.3 Accordingly, we are of the view that the Ld. PCIT in the given case has exceeded his jurisdiction by directing the AO to make the addition of the unexplained investment as discussed above. Thus, we hold that the order of the Ld. P.C.I.T, is not sustainable and accordingly we quash the same. Hence, the ground of appeal of the assessee is hereby allowed.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the Court on 12/01/2024 at Ahmedabad.

**Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated
Manish

(True Copy)
12/01/2024